

RESOLUTION NO. 14-006

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS
APPROVING SITE DEVELOPMENT PERMIT NO. SD13-0014 AND CONDITIONAL
USE PERMIT NO. UP14-0002 TO ALLOW FOR THE CONSTRUCTION OF A NEW
5,400 SQUARE FOOT RETAIL BUILDING AND ASSOCIATED SITE
IMPROVEMENTS LOCATED AT 1350 S. PARK VICTORIA**

WHEREAS, on July 25, 2013, an application was submitted by Yong S. Pak, Parktown Plaza Pak LLC, 480-490 Gianni St. Santa Clara, CA 95054 (“Owner”) for site modifications to allow for the construction a new 5,400 square foot retail building with three tenant spaces, one with drive through, outdoor seating areas, trash enclosure, and signage elements (“Project”). The property is located within the General Commercial Zoning District (APN 88-36-044); and

WHEREAS, the Planning Division completed an environmental assessment for the project and determined the project is categorically exempted from further environmental review pursuant to Section 15303 (C) (New Construction or Conversion of Small Structures) of the California Environmental Quality Act (CEQA) Guidelines; and

WHEREAS, on February 26, 2014, the Planning Commission held a duly noticed public hearing on the subject application and considered evidence presented by City staff, the owner or designee, and other interested parties;

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The Planning Commission has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the Planning Commission. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

Section 2: The proposed Project is categorically exempt from further environmental review pursuant to Section 15303 (C) (New Construction or Conversion of Small Structures) of the California Environmental Quality Act (CEQA) Guidelines. The Project entails the improvement of approximately 23,740 square of an existing asphalt parking lot and removal of thirteen trees to allow the construction of a 5,400 square retail building and installation of various site improvements including new trash enclosure, outdoor dining patio, new landscaping and site furnishings.

Section 3: Site Development Permit [Section XI-10-57-03-1(F)]

1. *The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.*

As further described in the staff report, the Project is consistent with this finding because the architecture features contemporary architectural design with modern elements that focuses on simple lines, varied roof lines, color blocking, and texturing. The overall character and scale of the building will be compatible with the surrounding structures in terms of height, massing, colors, and materials. The location and layout does not create a safety hazard and provides for a convenient and efficient circulation.

2. The project is consistent with the Milpitas Zoning Ordinance.

The project is consistent with this finding because the proposed retail and restaurants with or without vehicle drive-through service are permitted and conditionally permitted uses in the General Commercial Zoning District. The project complies with the development standards for setbacks, height, Floor Area Ratio, and parking as demonstrated in the table below:

Summary of Development Standards

	Standard	Proposed	Complies?
<u>Setbacks</u> (Minimum)			
Front	0 feet	178	Yes
Street Side	0 feet	20	Yes
Interior	15 feet	565'	Yes
Rear	0 feet	98'	Yes
<u>Floor Area Ratio</u> (Maximum)	.50	.25	Yes
<u>Building Height</u> (Maximum)	None	24'	Yes

The Project also complies with the City's Parking requirements as further described in the staff report.

3. The project is consistent with the Milpitas General Plan.

The Project is consistent with this finding because the Project is consistent with the purpose and intent of the General Commercial Zone in that it provides a wide range of commercial retail and service uses that primarily serves nearby residents and businesses. The Project is consistent with the following General Policies:

- *Implementing Policy 2.a-I-3 -Encourages economic pursuits which will strengthen and promote development through stability and balance.*

Comment: The proposed retail building will help revitalize an older shopping center by modernizing the architecture, providing space for new business enterprises and job opportunities that can cater to nearby residents and businesses, as well as promote stability and balance with the existing shopping center.

- *Implement Policy 2.a-I-6 - Endeavors to maintain a balanced economic base that can resist downturns in any one economic sector.*

Comment: The Project propose an additional 5,400 square foot retail space to an existing shopping center that includes a mix of commercial uses consisting of a grocery store, retail shops, commercial services, and various restaurant establishments that provides one-stop shopping convenience.

- *Implementing Policy 2.a-I-7 - Provides opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention.*

Comment: The Project will expand employment opportunities and promotes local business opportunities.

Section 4: Conditional Use Permit Findings (Section XI-10-57.4(F))

1. *The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

As further described in the staff report, the proposed window service or vehicle drive-through in conjunction with a restaurant requires Planning Commission review and approval of a Conditional Use Permit. The proposed use at the proposed location will not be detrimental or injurious to property or improvement, public health, safety, and general welfare because the drive-through provides sufficient queuing capacity and will not obstruct parking or on-site circulation. Furthermore, it will not create a traffic hazard in that the drive-through exit is located approximately 50-feet away from the easterly driveway outbound lane. The drive-through lane is screened with a row of shrubs and a row of European Hornbeam trees.

2. *The proposed use is consistent with the Milpitas General Plan.*

The proposed Project is consistent with the General Plan as analyzed above.

3. *The proposed use is consistent with the Milpitas Zoning Ordinance.*

The proposed Project is consistent with the Milpitas Zoning Ordinance as analyzed above.

Section 5: The Planning Commission of the City of Milpitas hereby approves Site Development Permit No. SD13-0014 and Conditional Use Permit No. UP14-0002 for the construction of a 5,400 square feet retail building and associated improvements, subject to the above Findings Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on February 26, 2014.

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on February 26, 2014, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Lawrence Ciardella				
John Luk				
Rajeev Madnawat				
Sudhir Mandal, Chair				
Demetress Morris				
Gurdev Sandhu				
Garry Barbadillo				
Hon Lien (Alternate)				

CONDITIONS OF APPROVAL

**SITE DEVELOPMENT PERMIT NO. SD13-0014 AND
CONDITIONAL USE PERMIT NO. UP13-0023**

General Conditions

1. The owner or designee shall develop the approved project in conformance with the attachments approved by the Planning Commission on February 26, 2014 in accordance with these Conditions of Approval. (P)

Any deviation from the approved attachments shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. (P)

2. Site Development Permit No. SD13-0014 and Conditional Use Permit No. UP14-0002 shall become null and void if the project is not commenced within two (2) years from the date of approval unless in conjunction with a tentative map, then the project life coincides with the life of the map. Pursuant to Section 64.06(B) of the Zoning Ordinance of the City of Milpitas, commencement shall be:
 - a. Completes a foundation associated with the project; or
 - b. Dedicates any land or easement as required from the zoning action; or
 - c. Complies with all legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner. (P)
3. Pursuant to Section 64.07 of the Milpitas Zoning Code, the owner or designee shall have the right to request an extension of Site Development Permit No. SD13-0014 and Conditional Use Permit No. UP14-0002 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. (P)
4. Cost and Approval. The satisfaction of each condition set forth in this Exhibit shall be at the sole expense of owner or owner's successors or assigns and each such condition shall be subject to City's review and approval. (P) (CA)
5. Pursuant to California Government Code Section 66020, any protest filed in court relating to the imposition of fees, dedication, reservations, or other exactions to be imposed on the development Project shall be filed within ninety (90) days after the date of the adoption of this Resolution. This provision serves as notice from the local agency to the Project

applicant that the ninety (90) day period in which the applicant may file a protest has begun under California Government Code Section 66020(d)(1). (P) (CA)

6. Indemnification. To the fullest extent permitted by law, owner or designee shall indemnify, defend with counsel of the City's choosing, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the project, including but not limited to, the approval of the discretionary permits, maps under the Subdivision Map Act, and/or the City's related determinations or actions under the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by owner or designee, City, and/or the parties initiating or bringing such proceeding. The owner or designee shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The owner or designee shall pay to the City upon demand or, as applicable, to counsel of City's choosing, any amount owed pursuant to the indemnification requirements prescribed in this condition. (CA)
7. The construction and use shall at all times comply with all local, State, and Federal laws, rules, regulations, guidelines, requirements, and policies. (P) (CA)
8. A detailed landscaping plan and irrigation shall be submitted and approved by the Planning Division prior to building permit submittal. The plan shall include details of the following:
 - a. The plan shall indicate location and type of trees, shrubs and ground cover, including plant type, plant name, container size quantities, and spacing.
 - b. All replacement trees shall consist of 24-inch box trees. The applicant shall revise landscaping plans to show a replacement ratio of 3:1 ratio for the removal of protected trees. A tree removal and protection plan shall be submitted with demolition plans.
 - c. The landscape plan shall comply with Ordinance No. 238 (An ordinance of the City of Milpitas regulating efficient water use for new or rehabilitated landscapes and existing landscapes).
 - d. All new planter areas along the building, modified parking aisles, and revised landscaped street frontages shall incorporate the use of structural soil to ensure proper growth and prevent damage to surrounding paved areas.
 - e. All mechanical equipment and boxes shall be screened from all views (public and private).
 - f. All planter areas shall be serviced by an automatic system with low volume drip, spray or bubbler emitters.
 - g. Planter pots installed on paving shall be provided with irrigation and be designed to drain to the storm drain. (P)

9. Above ground utilities, such as those for fire service for sprinkler systems, shall be designed as architectural components or provided internal to the buildings or adequately screened. (P)
10. The owner or designee shall conduct a preconstruction survey for nesting raptors between September and January by a qualified ornithologist or wildlife biologist to ensure that no raptor nest will be disturbed during demolition and construction activities. The survey shall be conducted no more than 14 day prior to the initiation of demolition/construction activities during the early part of the breeding season (January to April) and no more than 30 days prior to the initiation of these activities during the later part of the breeding season (May to August). During the survey, the ornithologist/biologist will inspect all trees for raptors nest. If an active raptor nest is found close enough to the demolition/construction area to be disturbed, the ornithologist/biologist (in consultation with the California Department of Fish and Game) will determine the extent of the construction free buffer zone to be established around the nest. The project will maintain the buffer zone, allowing no intrusion or impact to the tree(s) until after the young have fledged and are functioning independently of the nest. (P)
11. Prior to issuance of any building permit, final color selection, materials, and finishes for the proposed retail building and trash enclosure shall be submitted to the Planning Division for review and approval. (P)
12. Prior to any building permit issuance, the owner or designee shall submit a revised elevations for the proposed trash enclosure to show a 5-foot concrete stem wall and a 4-foot decorative screen. The revised elevations shall also incorporate a roof cover element such as but not limited to roof canopy, decorative trellis, or other design for Planning Division review and approval. (P)
13. The outdoor dining patio shall utilize decorative colored stamped paving or other material to the approval of the Planning Division.
14. Pedestrian crosswalks shall utilize decorative paving such as but not limited to stamped colored concrete, textured paving stones, or other material to the approval of the Planning Division.
15. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development approval. The foregoing provisions are a material (demand/supply) condition to this approval. (PW)
16. Prior to issuance of any building permit, owner or designee shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the

impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the owner or designee will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (PW)

17. At the time of grading building permit issuance, owner or designee shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions, and facilities. The study shall be reviewed and approved by the City Engineer and the owner or designee shall satisfy the conclusions and recommendations of the approved drainage study prior to final map approval of the first phase of development. (PW)
18. Prior to any building permit issuance, the owner or designee shall obtain design approval and bond for all necessary public improvements along Landess Avenue frontage, including but not limited to half width of the street frontage slurry seal, curb, gutter, driveways and sidewalk replacement, street trees, signage and striping, storm drain, sewer and water services. Plans for all public improvements shall be prepared on 24"x36" sheets with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The owner or designee shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. All public improvements shall be constructed and accepted by the City prior to building occupancy permit issuance. (PW)
19. The owner or designee shall submit the following items with the building permit application and pay the related fees prior to final inspection (occupancy) by the Building Division:
 - a) Storm water connection fee of **\$193,842** based on 8.99 acres @ \$21,562 per acre. The water connection fee, sewer connection fee and treatment plant fee will be calculated at the time building plan check submittal.
 - b) Water Service Agreement(s) for water meter(s) and detector check(s).
 - c) Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s). The above fee rates are estimates only. Owner or designee shall pay the full amount based on the applicable rate in effect at that time of issuance of the building permit(s) for the Project. (PW)
20. Prior to any building permit issuance, the applicant shall contribute a "fair share" traffic impact fee for the Calaveras Widening in the amount of **\$3823**. This amount is as of 2008, and to be adjusted by ENR at the time of payment. The above fee rate is an estimate only. Owner or designee shall pay the full amount based on the applicable rate in effect at that time of issuance of the building permit(s) for the Project.
21. Prior to any building permit issuance, the owner or designee must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm),

treatment plant fee, plan check and inspection deposit, and 2.5% building permit automation fee. Owner or designee shall pay the full amount based on the applicable rate in effect at that time of issuance of the building permit(s) for the Project. (PW)

22. The owner or designee shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (PW)
23. Prior to any building occupancy permit issuance, the owner or designee shall dedicate necessary easements for public service utilities, water, and sanitary sewer purposes. Project is required to dedicate 5-foot Public Service Utility Easement along Landess Avenue frontage. (PW)
24. All existing public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements and no trees or deep rooted shrubs are permitted within City utility easements, where the easement is located within landscape areas. (PW)
25. If necessary, owner or designee shall obtain required industrial wastewater discharge approvals from San Jose/Santa Clara Water Pollution Control Plant (WPCP) by calling WPCP Industrial Source Control Inspector at (408) 945-5300. (PW)
26. Prior to any occupancy permit issuance, the owner or designee shall construct solid waste enclosures to house the necessary solid waste bins. The enclosure shall be designed per the Development Guidelines for Solid Waste Services, and enclosure drains must discharge to sanitary sewer line. City review & approval of the enclosures are required prior to construction of the trash enclosures. (PW)
27. Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit. (PW)
28. Per Chapter 200, Solid Waste Management, V-200-3.10, *General Requirement*, applicant / property owner shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 *Owner Responsible for Solid Waste, Recyclables, and Yard Waste*, applicant / property owner shall subscribe to and pay for solid waste services rendered. Prior to occupancy permit issuance (start of operation), the owner or designee shall submit evidence to the City that a minimum level of refuse service has been secured using a Service Agreement with Allied Waste Services (formally BFI) for commercial services to maintain an adequate level of service for trash and recycling collection. After the applicant has started its business, the owner or designee shall contact

Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the owner or designee shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (PW)

29. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers, including but not limited to construction activities, to eliminate as much as possible pollutants entering our receiving waters. Construction activities which disturb 1 acres or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the owner or designee, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (PW)
30. The owner or designee shall comply with Regional Water Quality Control Board's C.3 requirements and implement the following:
 - a. At the time of building permit plan check submittal, the owner or designee shall submit a "final" Stormwater Control Plan and Report.
 - b. Site grading, drainage, landscaping and building plans shall be consistent with the approved Stormwater Control Plan.
 - c. The Plan and Report shall be prepared by a licensed Civil Engineer and certified that measures specified in the report meet the C.3 requirements of the Regional Water Quality Control Board (RWQCB) Order, and shall be implemented as part of the site improvements.
 - d. The final Storm Water Control Plan will NOT be approved for City acceptance until an approved third party reviewer review the plan and certify the plan to the MRP requirements and compliance. (PW)
31. Prior to any building permit issuance, the owner or designee shall submit an Operation and Maintenance (O&M) Plan for the long-term operation and maintenance of C-3 treatment facilities. (PW)
32. Prior to Final Occupancy issuance, the owner or designee shall execute and record an O&M Agreement with the City for the operation, maintenance and annual inspection of the C.3 treatment facilities. (PW)
33. Prior to building, site improvement or landscape permit issuance, the building permit applications shall be consistent with the owner or designee's approved Stormwater Control Plan and approved special conditions, and shall include drawings and specifications necessary to implement all measures described in the approved Plan. As may be required by the City's Building, Planning or Engineering Divisions, drawings submitted with the permit application (including structural, mechanical, architectural, grading, drainage, site,

landscape and other drawings) shall show the details and methods of construction for site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control stormwater flow and potential stormwater pollutants. Any changes to the approved Stormwater Control Plan shall require Site & Architectural (“S” Zone) Amendment application review. (PW)

34. Prior to issuance of Certificate of Occupancy, owner or designee shall submit a Stormwater Control Operation and Maintenance (O&M) Plan, acceptable to the City, describing operation and maintenance procedures needed to insure that treatment BMPs and other stormwater control measures continue to work as intended and do not create a nuisance (including vector control). The treatment BMPs shall be maintained for the life of the project. The stormwater control operation and maintenance plan shall include the applicant’s signed statement accepting responsibility for maintenance until the responsibility is legally transferred. (PW)
35. Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), the owner or designee may be required to obtain a permit for removal of any existing tree(s). Contact the Street Landscaping Section at (408) 586-2601 to obtain the requirements and forms. (PW)
36. In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the owner or designee shall:
 - a. Provide separate water meters for domestic water service & irrigation service. Owner or designee is also encouraged to provide separate domestic meters for each tenant.
 - b. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the owner or designee or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.
 - c. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process. (PW)
37. Per Chapter 6, Title VIII of Milpitas Municipal Code (Ord. No. 240), the landscape irrigation system must be designed to meet the City’s recycled water guidelines and connect to recycled water system *when available*. The owner or designee is encouraged to design the entire landscaped area for recycled water connection. If the site is not properly designed for recycled water at this time, the entire site will be required to retrofit when recycled water becomes available. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for design standards to be employed. (PW)
38. Prior to any work within public right of way or City easement, the owner or designee shall obtain an encroachment permit from City of Milpitas Engineering Division. (PW)

39. The owner or designee shall call Underground Service Alert (U.S.A.) at (800) 642-2444, 48 hrs prior to construction for location of utilities. (PW)
40. It is the owner or designee's responsibility to obtain any necessary permits or approvals from affected agencies and private parties. Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division. (PW)
41. Prior to start of any construction, the owner or designee shall submit a construction schedule and monitoring plan for City Engineer review and approval. The construction schedule and monitoring plan shall include, but not be limited to, construction staging area, parking area for the construction workers, personal parking, temporary construction fencing, construction information signage, and establish a neighborhood hotline to record and respond to neighborhood construction related concerns. The owner or designee shall coordinate their construction activities with other construction activities in the vicinity of this project. The owner or designee's contractor is also required to submit updated monthly construction schedules to the City Engineer for the purpose of monitoring construction activities and work progress. (PW)
42. The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in Flood Zone "D".(PW)

Conditional Use Permit

43. Based on the existence of any future condition as solely determined by City in which the drive-through queue consistently extends to the point of conflicting with onsite or off-site traffic, such conflict shall be grounds for further review of the Conditional Use Permit, which may lead to additional operational or site development modifications as necessary to resolve conflict. (P)
44. Installation of menu board associated with drive-through establishment shall comply with the Milpitas Sign Ordinance requirements and shall comply with noise standards for the General Commercial Zone. (P)
45. Any future restaurant uses shall comply with the following performance standards:
 - a. Seating shall not exceed that which the amount of parking allocated for the restaurant space would allow. A sign measuring at least one (1) foot by one (1) foot, with a lettering height of at least three (3) inches, shall be placed in a conspicuous location near the restaurant front entrance stating the maximum total seating allowed.
 - b. The restaurant shall comply with the City Council's Guidelines for Recycling Enclosures (Resolution No. 6296).
 - c. The restaurant shall incorporate measures to reduce odors to acceptable levels, including, but not limited to, installation of a scrubber, carbon filter or similar equipment, on the roof vent to control odors.

- d. All the facility's floor drains, trash compactors and indoor mat and equipment washing areas shall be drained to the sanitary sewer.
 - e. Where applicable, the restaurant shall maintain an active account with a tallow hauling company.
 - f. The restaurant shall prepare and implement a program assigning restaurant staff responsibility for complying with the following guidelines which shall be adhered to while the restaurant is in operation:
 - g. Wash all containers and equipment in the kitchen areas so that wash water may drain into the sanitary sewer.
 - h. Keep garbage dumpsters clean inside and out; replace very dirty dumpsters with new, clean ones.
 - i. Double bag waste to prevent leaking.
 - j. Place, do not drop or throw, waste-filled bags, to prevent leaking.
 - k. Keep the ground under and around the garbage dumpsters swept.
 - l. Sprinkle the ground lightly after sweeping with a mixture of water and a little bleach.
 - m. Hold training sessions to instruct employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the compactor and any other procedures that would assist the business in complying with all State and local health and sanitation standards. A record of such training must be kept to prove compliance with this requirement.
 - n. Post signs (in English and multi-lingual) inside the premises for all employees identifying procedures for food delivery and garbage disposal.
 - o. All garbage bins shall be stored in the garbage enclosure except for the twelve (12) hours immediately before and after garbage collection. (P)
45. The design, quality, materials and colors used for chairs, tables, lighting and other fixtures shall complement the architectural style and colors used on the adjacent buildings. (P)
46. Outdoor dining areas that have more than four tables or more than eight chairs shall separate the dining area from the walkway with fencing, swag roping, decorative plants, landscape planters, or other architectural barriers that prevent encroachment of tables and chairs into the five-foot pathway being maintained for pedestrian access. (P)
47. Lighting will be required for outdoor dining areas where food will be eaten during the evening hours. The lighting fixtures must be decorative and complement the architectural character of the building and area. Lights mounted on the building shall not cause direct glare or other visual obstruction to pedestrians or vehicle drivers along the street and public walkway, and should illuminate only the sidewalk area. (P)
48. Portable umbrellas may be permitted provided they do not obstruct the public right-of-way or walkway, and do not contain advertising. (P)
49. The owner of the primary business is responsible for proper operation of the outdoor dining area. Outdoor dining shall be continuously supervised by management or employees. Food

establishments serving alcoholic beverages shall have a supervisor, at least 21 years of age, on-site at all times of operation. Any behavior that disturbs customers or passersby on the sidewalk will constitute grounds for revocation of any permit(s) to operate an outdoor dining area. (P)

50. Establishments are required to maintain all areas in and around the sidewalk dining area in a manner which is clean and free of litter and debris. (P)
51. The outdoor dining hours of operation shall be limited to the hours of operation of the associated food or beverage establishment. (P)
52. Outdoor dining areas shall be operated in a manner that meets all requirements of the health department of Santa Clara County and all other applicable regulations, laws, ordinances and standards. Food establishments serving alcoholic beverages shall also obtain all necessary permits required by the State Alcoholic Beverage Control Department. (P)
53. All outdoor displays must be placed so as not to obstruct business entrances, pedestrian pathways and driveways. (P)
54. Outdoor displays shall not include signs or contain advertising materials and limited to artwork, pottery, architectural feature and/or decorative planters. (P)
55. The sale or on-site consumption of alcohol is not approved with this permit. (P)

(P) = Planning

(PW) = Public Works

(CA) = City Attorney